INSURANCE CODE

TITLE 13. REGULATION OF PROFESSIONALS

SUBTITLE B. AGENTS

CHAPTER 4053. MANAGING GENERAL AGENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4053.001. DEFINITIONS. In this chapter:

- (1) "Affiliate" means a person who is classified as an affiliate under Section 823.003(a).
- (2) "Insurer" means an insurance company, carrier, corporation, reciprocal or interinsurance exchange, mutual, association, county mutual insurance company, Lloyd's plan, or other insurance carrier authorized to engage in the business of insurance in this state.
- (3) "Managing general agent" means a person, firm, or corporation that has supervisory responsibility for the local agency and field operations of an insurer in this state or that is authorized by an insurer to accept or process on the insurer's behalf insurance policies produced and sold by other agents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.002. EXCEPTION. An agent licensed under Subchapter E, Chapter 981, Subchapters B-E or I, Chapter 4051, or Chapter 4056 is not a managing general agent unless the agent accepts 50 percent or more of the agent's total annual business or does \$500,000 or more of total annual business as measured by premium volume, whichever amount is less, from insurance policies produced and sold by other agents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.25, eff. September 1, 2007.

Sec. 4053.003. INAPPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) the transaction of the business of life, health,

and accident insurance, including variable life insurance and variable annuity contracts;

- (2) a full-time salaried employee of an insurer acting for and in connection with the insurance business of the insurer; or
- (3) an adjuster or inspector of risks for an insurer. Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.004. REGULATION OF MANAGING GENERAL AGENTS. This title applies to the licensing and regulation of a person acting as a managing general agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.005. RULES. The commissioner may adopt reasonable rules for the administration of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER B. LICENSE REQUIREMENTS

- Sec. 4053.051. LICENSE REQUIRED; EXEMPTIONS. (a) Except as provided by Subsection (b), a person, firm, or corporation may not act as a managing general agent unless the person, firm, or corporation holds a license issued under this chapter.
- (b) A business corporation is not required to hold a license issued under this chapter to act as a managing general agent if:
- (1) the corporation is authorized to engage in business in this state;
- (2) all of the corporation's outstanding stock is solely owned by an insurer authorized to engage in business in this state and the corporation's business affairs are completely controlled by that insurer;
- (3) the principal purpose for which the corporation exists is to facilitate the accumulation of commissions from the insurer and its subsidiaries and affiliates for the account of and payment to an agent who could otherwise lawfully receive the commissions directly from the insurer and its subsidiaries and affiliates; and

- (4) the corporation does not engage in any other act of a managing general agent as provided by this chapter.
- (c) Notwithstanding Subsection (b), the managing general agent shall execute on the insurer's behalf a contract entered into with an agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.053. SINGLE LICENSE REQUIRED. A license issued under this chapter entitles the license holder to represent or act for one or more insurers as a managing general agent. The license holder is not required to hold a separate license for each insurer the license holder represents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.054. NOTICE AND APPROVAL OF APPOINTMENT. (a) Each appointment to act as a managing general agent shall be reported to the commissioner on a form prescribed by the commissioner.

- (b) The form must include:
- (1) the details required by rules adopted under this chapter;
 - (2) the insurer's name and identifying number;
 - (3) the managing general agent's name and address;
- (4) a statement by an officer of the insurer that the officer or the officer's agent has personal knowledge that the managing general agent has had experience or instruction that qualifies the agent to act as a managing general agent;
- (5) a statement of whether the managing general agent may exercise claim settlement authority for the insurer and, if so:
- (A) whether that authority exceeds \$25,000 on any one claim; and
- (B) whether that authority includes third-party liability other than property damage; and
- (6) a statement of whether funds exceeding \$100,000 are customarily held by the managing general agent to pay losses and loss adjustment expenses for the insurer.
 - (c) For each additional appointment for which a managing

general agent applies, the agent shall pay a nonrefundable fee in an amount not to exceed \$16 as determined by the department.

(d) If approval of an additional appointment is not received from the commissioner before the eighth day after the date the commissioner receives the completed application and fee, the managing general agent and insurer may assume, in the absence of notice of disapproval from the commissioner, that the commissioner approves the application and the managing general agent may act for the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.055. LAPSE OF LICENSE. If a license holder is not appointed or under appointment to represent an insurer at the time the license is subject to renewal, the license lapses and the commissioner shall deny the renewal application.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER C. POWERS AND DUTIES OF MANAGING GENERAL AGENTS

- Sec. 4053.101. GENERAL POWERS AND DUTIES. A managing general agent acting for an insurer may:
- (1) receive and pass on daily reports and monthly accounts;
 - (2) receive and be responsible for agency balances;
 - (3) handle the adjustment of losses; or
- (4) appoint or direct general property and casualty agents and personal lines property and casualty agents in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.26, eff. September 1, 2007.

Sec. 4053.102. CONTRACTS. (a) An insurer may not accept business from a managing general agent and the agent may not place business with the insurer without a written contract that addresses:

- (1) the responsibilities of each party;
- (2) cancellation or termination;
- (3) reports, records, and auditing; and
- (4) if applicable:
 - (A) premium volume limits;
 - (B) appointment or cancellation of agents;
 - (C) claims settlement;
 - (D) underwriting; and
 - (E) reinsurance.
- (b) The commissioner may adopt rules establishing requirements for a contract with a managing general agent.
- (c) A contract with a managing general agent and a report or record submitted under that contract are subject to review by the department under Section 38.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.103. ACCOUNT REPORT. (a) At least once each calendar quarter, a managing general agent shall submit an account report to each insurer with whom the agent has a contract.

- (b) The account report must include, as applicable, a statement of:
 - (1) written, earned, and unearned premiums;
 - (2) losses and loss expenses paid and outstanding;
 - (3) losses incurred but not reported; and
 - (4) management fees.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

- Sec. 4053.104. SEPARATE RECORDS. (a) For each insurer with which a managing general agent has a contract, the agent shall maintain separate records of the business handled by the agent for the insurer.
- (b) The managing general agent shall make a record required under Subsection (a) available for inspection by:
 - (1) each insurer; and
 - (2) the department's examiners.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.105. ESCROW ACCOUNT. (a) A managing general agent shall maintain an escrow account in a bank that:

- (1) is a member of the Federal Reserve System; and
- (2) has its accounts insured by the Federal Deposit Insurance Corporation.
- (b) On receipt, the managing general agent shall deposit in the escrow account all money collected for each insurer with which the agent has a contract.
- (c) Except as provided by the contract required by Section 4053.102, a managing general agent may not use, take as an offset, or convert money that is or should have been deposited in the escrow account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.106. FIDUCIARY CAPACITY. A managing general agent holds money on behalf of an insured or insurer in a fiduciary capacity and shall properly account for that money as required by law, department rules, and a contract with an insurer. The department's examiners may audit money held in a fiduciary capacity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.107. FINANCIAL EXAMINATION. (a) As the commissioner considers necessary, a managing general agent shall submit to an examination of the agent's financial condition and the agent's compliance with the laws of this state affecting the conduct of the agent's business.

- (b) The examination may be conducted by:
 - (1) the commissioner;
 - (2) one or more commissioned examiners; or
- (3) a certified public accountant or other person or firm qualified to perform those examinations.
- (c) The managing general agent shall pay the examination expenses in an amount the commissioner certifies as just and reasonable.
- (d) A person with whom another state contracts to perform any examination initiated by the other state of a managing general

agent licensed under this chapter shall register with and provide the following information to the department's chief examiner:

- (1) the person's name;
- (2) if the person is not an individual, the identity of each examiner or other person who will perform any part of the examination;
- (3) the name of the state that contracted with the person;
- (4) the identity of the managing general agent to be examined;
- (5) a description of each issue that the person has been contracted to examine;
- (6) an estimate of the examination costs to be charged to the managing general agent to be examined;
- (7) a copy of any contract between the person and the state regulatory body that initiated the examination and the letter authorizing the examination; and
- (8) a list of the previous examinations conducted on the same managing general agent on behalf of any state within the last three years.
- (d-1) On accepting a person's registration under Subsection (d), the department shall send written confirmation of the acceptance to:
 - (1) the person;
 - (2) the managing general agent to be examined; and
- (3) the state regulatory body that initiated the examination.
- (e) It is a violation of this code for a person to accept compensation from multiple states for the same examination, if doing so results in duplicative costs to the managing general agent being examined. It is not a violation of this code for:
- (1) an examiner to conduct an examination of a managing general agent for the benefit of multiple states in a coordinated examination; and
- (2) the examiner to accept compensation from the states participating in the coordinated examination to reduce the examination costs to the managing general agent being examined.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1030 (H.B. 4359), Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 185 (S.B. 1229), Sec. 3, eff. May 28, 2011.

- Sec. 4053.108. REQUIRED NOTICES TO DEPARTMENT. (a) On forms prescribed by the department, a managing general agent shall notify the department not later than the 30th day after the date any of the following occurs:
- (1) balances due to an insurer for more than 90 days exceed:
 - (A) \$1 million; or
- (B) 10 percent of the insurer's policyholder surplus, as reported in the annual statement filed with the department;
- (2) balances due for more than 60 days from a property and casualty agent or managing general agent appointed by or reporting to the managing general agent exceed \$500,000;
- (3) authority to settle claims for an insurer is withdrawn;
- (4) money held for an insurer for losses is greater than an amount that is \$100,000 more than the amount necessary to pay the losses and loss adjustment expenses expected to be paid on the insurer's behalf within the next 60-day period; or
- (5) the contract required under Section 4053.102 is canceled or terminated.
- (b) Notwithstanding the time limitation imposed by Subsection (a), the requirement to file under Subsections (a)(1),(2), and (4) may be met with a single annual report if:
- (1) the managing general agent routinely operates above the limits established by those subsections; and
- (2) the department verifies that fact in accordance with rules adopted by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.109. REINSURANCE. (a) A managing general agent may not knowingly cede, arrange, facilitate, or bind an insurer to reinsurance.

- (b) Notwithstanding Subsection (a), a managing general agent may bind a facultative reinsurance contract in accordance with an obligatory facultative agreement if the contract with the insurer contains reinsurance underwriting guidelines including, for both assumed and ceded reinsurance:
- (1) a list of reinsurers with whom the automatic agreements are in effect;
- (2) the coverages and amounts or percentages that may be reinsured; and
 - (3) commission schedules.
- (c) A managing general agent may not commit an insurer to participate in insurance or reinsurance syndicates.

 Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.110. REDEMPTION OF CORPORATE SHARES. A corporation acting as a managing general agent may redeem the shares of a shareholder or a deceased shareholder:

- (1) on terms agreed on by the board of directors and the shareholder or the shareholder's personal representative; or
- (2) at a price and on terms provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER D. ENFORCEMENT

Sec. 4053.151. DISCIPLINARY ACTION. A person, firm, or corporation that violates this chapter or a rule or order adopted under this title, including this chapter, is subject to:

- (1) Subchapters B and C, Chapter 4005; and
- (2) Chapter 82.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.152. GUARANTY FUND REIMBURSEMENT. (a) If a court

finds by a final nonappealable judgment that a violation of this chapter by a managing general agent contributes materially to the insolvency of an insurer under which the agent held an appointment, the agent shall reimburse the appropriate guaranty fund for money paid to cover losses of the insolvent insurer in an amount equal to all payments made from that guaranty fund in excess of:

- (1) gross earned premiums and investment income earned on those premiums; and
 - (2) loss reserves for that business.
- (b) The reimbursement made under this section shall be used for losses, loss adjustments, and administrative expenses on business placed by the managing general agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.